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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 11 2005
WAC 01 217 53939

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal of that decision. On the basis of new information, the AAO has reopened the proceeding to consider the appeal on its merits. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner states that he seeks employment as a food technologist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The director offered no clear finding regarding the underlying claim of exceptional ability.

The petitioner's initial appellate filing consisted solely of the assertion that a brief would be forthcoming. The AAO summarily dismissed the petitioner's appeal because, at the time the AAO reviewed the appeal, the brief was not contained in the record of proceeding. Subsequently, the timely-filed brief has surfaced, and the AAO therefore withdrew its summary dismissal and reopened the proceeding in order to consider the matter on its merits. The petitioner has submitted supplementary materials for consideration.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Counsel describes the petitioner's work:

> [The petitioner] has unique talents in the combined disciplines of chemical, mechanical, production and industrial engineering. His application of these talents has resulted in the successful implementation of elegant and innovative production facilities in various locations throughout the world. . . .
>
> [The petitioner] has designed and fabricated such products as flavor dispensing and coating systems, crimping facilities for co-extruded products and support systems for submerged conveyors. . . . [The petitioner] not only invents these products from his ideas, but he also conducts feasibility studies for the products, engineers the building, plant layout and machinery needed for the establishment of the production line, designs the packaging,

> establishes quality controls, trains personnel and modifies the finished products to meet market demands.

The first issue we must consider is whether the petitioner qualifies for the classification sought, either as a member of the professions holding an advanced degree or as an alien of exceptional ability.

The petitioner does not claim to be a member of the professions holding an advanced degree, and therefore the director did not consider whether the petitioner qualifies for that classification. In the interest of thoroughness, we shall briefly discuss that classification here. 8 C.F.R. § 204.5(k)(2) defines "profession" as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. The same regulation defines "advanced degree" as any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

8 C.F.R. § 204.5(k)(3)(i) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

> (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The Department of Labor's Occupational Outlook Handbook, 2004-2005 edition, indicates that different positions for food scientists (including food technologists) have varying degrees of minimum academic requirements, but the Handbook does not discuss any position that does not require at least a bachelor's degree. The description from the Handbook is available online at http://bls.gov/oco/ocos046.htm (accessed June 16, 2005). This indicates that the occupation of food technologist is a professional occupation. Also, much of the record indicates that the petitioner is, essentially, an engineer, which, in turn, is an occupation defined as a profession at section 101(a)(32) of the Act.

The petitioner holds a bachelor's degree, but no advanced degree. There is no evidence to show that his "course of practical training" under the auspices of the Confederation of British Industry (more about which later) led to an academic degree. Therefore, the petitioner can only qualify as an advanced degree professional if he establishes at least five years of progressive post-baccalaureate experience in the specialty. As we shall discuss below in further detail, the petitioner has *claimed* over ten years of experience as a food technologist, but the evidence of record is vague and intermittent with regard to the petitioner's past work. Letters from more than five years before the filing date, containing references to the petitioner's work as a food technologist, cannot suffice to establish the required experience. Therefore, while the record does not rule out the petitioner's eligibility as a member of the professions with post-baccalaureate experience equivalent to an advanced degree, the available evidence is insufficient to allow a finding of eligibility.

The petitioner seeks classification as an alien of exceptional ability. The director, in denying the petition, discussed this claim, but stated no discernible finding as to whether or not the petitioner qualifies for that

classification. Because the petitioner has not shown that the petition is otherwise approvable, we shall discuss this issue here.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

Of the six regulatory criteria, counsel claims that the petitioner has met the following four:

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.*

The petitioner earned a bachelor's degree in chemical engineering from the University of Karachi, Pakistan, in 1974. From September 1977 to April 1978, the petitioner "completed a course of practical training in Chemical Engineering-Design, Development and management in Chemical Plants," under "a scholarship by the Confederation of British Industry."

The burden is on the petitioner to establish that his educational background establishes a degree of expertise significantly above that ordinarily encountered among food technologists. As we have already noted, the Occupational Outlook Handbook indicates that a bachelor's degree is the *minimum* requirement for entry into the field. That same source indicates that many positions require master's or doctoral degrees, which the petitioner does not possess. Therefore, we have no reason to conclude that the petitioner's educational background, which stopped at the baccalaureate level, exceeds what is normally encountered among food technologists.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.*

The petitioner submits several witness letters. Several of the witnesses are not, in fact, the petitioner's current or former employers; rather, they are colleagues from other companies who assert that they have worked with the petitioner in the past. For instance, witnesses in the Netherlands, France and Sweden attest to the petitioner's management of a factory in Saudi Arabia. There are also letters of appreciation from companies that provided equipment to factories managed by the petitioner. Such letters do not satisfy the plain wording of the regulation, because the letters must be "from current or former employer(s)." 8 C.F.R. § 103.2(b)(2)(i) limits the circumstances under which a petitioner may substitute secondary evidence for primary evidence, and indicates that the petitioner must demonstrate and overcome the unavailability of primary evidence.

Only one witnesses appears to be an official of a company where the petitioner has previously worked. [redacted], president of American Extrusion International, states that he has "known [the petitioner] for ten years," and that the petitioner has worked with the company, but Mr. [redacted] does not specify the

dates of the petitioner's employment. Ten years of acquaintance is not equal to ten years of full-time employment.

The record contains a copy of a message dated 19/09/1418 on the Islamic Hijri calendar (equivalent to January 18, 1998 on the Gregorian calendar), indicating that a photographer from the Saudi Industrial Development Fund would be visiting Zawaq Food Factory on 12/10/1418 (February 10, 1998). The petitioner's name does not appear anywhere on the document. Therefore, this document is not evidence of employment, notwithstanding any weak inference arising from the petitioner's ability to obtain a copy of the document.

The petitioner has submitted evidence referring to his management of food factories during the 1990s, but he has not submitted letters from previous employers to demonstrate that he has at least ten years of full-time experience as a food technologist, nor has the petitioner submitted evidence to show that letters from the former employers is unavailable.

Evidence of membership in professional associations.

The petitioner documents his membership in the Institute of Food Technologists. This membership appears to satisfy this criterion.

Other certificates and memberships either have no particular relation to food technology, or else they pertain to the petitioner's student work (such as his term as secretary of the Society of Chemical Engineers at the National College of Engineering and Technology in 1971-1972, when the petitioner was an 18-year-old university freshman). The petitioner also cites his scholarship from the Confederation of British Industry under this criterion. The petitioner does not explain how this scholarship, which funded "a course of practical training," amounts to membership in a professional association.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Counsel cites the several witness letters submitted on the petitioner's behalf. Many of these letters (to be discussed elsewhere in this decision) resemble recommendation letters issued at the conclusion of a project or term of employment. The record does not establish unsolicited, public recognition, for instance in the form of awards from professional associations. The regulation favors concrete evidence above witness letters.

On February 1, 2002, the director instructed the petitioner to submit additional evidence to establish that the petitioner qualifies as an alien of exceptional ability. In response, the petitioner has submitted additional witness letters, but nothing that would satisfy any of the criteria listed at 8 C.F.R. § 204.5(k)(3)(ii).

On appeal from the director's subsequent decision, counsel asserts that the director "affirmatively acknowledges" that the petitioner meets the criteria pertaining to degrees in the field, ten years of experience, and recognition for achievements. The director's decision is worded so ambiguously that we cannot determine whether the director did indeed acknowledge the petitioner's satisfaction of these criteria. In any event, the petitioner has requested appellate review of the director's decision, and, as discussed above, the evidence is lacking with regard to these criteria.

Based on the foregoing, we conclude that the petitioner has not satisfied at least three of the six criteria set forth at 8 C.F.R. § 204.5(k)(3)(ii), and therefore the petitioner has not established eligibility as an alien of

exceptional ability. Because of this, and because the petitioner has not even claimed to be a member of the professions holding an advanced degree or its equivalent, we conclude that the petitioner has not submitted sufficient evidence to establish that he qualifies for the classification sought.

The other issue under consideration is whether the petitioner qualifies for a waiver, in the national interest, of the job offer requirement. This issue is moot without a finding of eligibility for the underlying classification, but we shall consider it here because it occupies the bulk of the director's decision.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel contends "there is *nobody* performing in a similar capacity to [the petitioner]. Unlike any other engineer, [the petitioner] has the innovative gift of creating products from his ideas, or turning concepts into realities." Having made such a claim, the burden lies entirely on the petitioner to demonstrate that no other engineer has the ability to conceive products or processes and then create or implement them. On its face, such a claim appears to be exaggerated, and requires stronger support than a handful of letters from witnesses selected by the petitioner.

The petitioner submits a list of projects he claims to have undertaken. Examples of these projects include:

> Flavor Dispensing & Coating System: Design and Development on existing system to feed oil and flavor in a small mixing tank prior to dispensing in the coating drum. This system allows very fine tune up of flavor and taste, addition of other ingredients, and interchange of various flavors rapidly thus cutting down the down time.
>
> Crimping Facility for co-Extruded Products: This unique system allows [manufacturers] to crimp out the out coming extruded products to be shaped and cut in any shapes depending on the shapes of the crimping tool.
>
> Damping System on Vibro-Flow Conveyors: The system is developed to stop the breakage of fragile products while shifting from one vibro-conveyor to another. The system is based on spring loaded flaps just touching the flights of the conveyor. This also generated a motion which accelerates the discharge of chips in a swinging motion. This system reduces the breakage of products by 30%.

The Occupational Outlook Handbook states: "Food technologists generally work in product development, applying the findings from food science research to the selection, preservation, processing, packaging, distribution, and use of safe, nutritious, and wholesome food." Any national interest claim by a food technologist must go beyond simply listing instances in which the alien has performed these functions. Similarly, projects that allowed one company to gain an advantage over its competitors may have been in the interest of that company, but this does not necessarily translate into *national* interest. The petitioner must show not only that he is a competent and qualified food technologist, but that his past contributions to that field are so significant that it is in the national interest to ensure future contributions by the petitioner in the United States.

The petitioner submits copies of letters, the most recent of which date from the autumn of 1999, shortly after the petitioner arrived in the United States. [redacted], identified above, states:

> Unlike any other engineer, [the petitioner] has the ability to create products from an idea. In Saudi Arabia, he produced a food product essentially from "scratch." He made feasibility studies for the product, and then engineered the building, the plant layout and the purchase of specialized machinery. . . . [H]e modified and created new machinery to perform specific tasks . . . [and] went further in designing the packaging, establishing quality controls, training personnel and modifying the finished product to meet market demands.
>
> While working with American Extrusion, [the petitioner] developed a slurry spray and coating system that allowed the interchange of various flavors in preparing snack foods. This allowed a major decrease in set up time in the production line. Set up time is one of the major constraints for any company producing a variety of products. A decrease in set up time has a major impact on profitability and the ability to remain competitive by being responsive to customer demands.
>
> Similarly, [the petitioner] developed a "crimping facility" that allowed extruded snack products to be cut into just about any shape merely by changing the crimping tool. Again this is a unique innovation that directly impacted productivity and profitability. Not only was this "crimping" solution elegant in design, it was also low in cost and simple to maintain.

[The petitioner] is exceptional in his ability to turn a concept into a reality. In other enterprises, I have seen engineers with one or more of the qualities that [the petitioner] possesses. I have never before or since seen anyone capable of synthesizing and applying the various engineering disciplines such as industrial, chemical and mechanical engineering.

[redacted], director of business development at Quest International, states:

During my early visits to the food industry in Saudi Arabia I have met with [the petitioner], a fascinating person, in his position as factory manager of Al Zawaq Food Factory, belonging to the House of Naghi.

Al Zawaq is a producer of extruded savory snacks based on potato starch.

I was extremely impressed by the lay out of the factory, which clearly demonstrates the skills and dedication of [the petitioner].

Every detail, from production to storage, is very efficient. Special attention has been given to hygiene. The application and quality control laboratories are pretty unique for a food company in general and in particular for Saudi Arabia.

Innovation is a strong asset of [the petitioner] that can be demonstrated by some examples.

1. For the first time in [the] history of snacks a new and innovative type of sweet extruded products was added to the snack market in Saudi Arabia. Fully developed in house, with the technical support of Quest International flavorists, these products can be made in a variety of ways to cater [to] all sectors of the market, including health line, for diabetics and children in particular.
2. [The petitioner] designed an innovative system for the production of these sweet extruded snacks. This system allows applying the coating ingredients in their own physical state rather than mixing them in advance. Premixing of coating systems is messy, costly and time consuming and a specific batch ha[s] to be made. If a problem on the line might occur, the batch has to be destroyed, thus incurring losses of production.
3. Potato starch and granules are the substrates for the production of the extruded snacks. Quest has developed a process to replace these potato derivatives [with] wheat starch, which is a much cheaper starch alternative, in combination with a flavor system to maintain the original flavor profile of the potato substrate. [The petitioner] immediately got ex[c]ited and started to apply this novelty in the development phase in the Zawaq factory.

In addition I am familiar with the fact that [the petitioner] has designed, developed and fabricated a number of other systems and products that contribute to the emerging food market in Saudi Arabia in general and to the benefit of the Naghi Group in particular.

We note that item 3 in Mr. [redacted] list is not an example of innovation by the petitioner, but rather, it shows the petitioner's implementation of an ingredient substitution developed by Mr. [redacted]'s company.

[redacted], regional sales director for Monsanto, states that the petitioner "initiated and coordinated a joint venture between Monsanto and Zawaq Foods. Zawaq Foods was able to produce a line of low-calorie foods

based on Monsanto's formulation due primarily to [the petitioner's] technical knowledge and ability to innovate." Other witnesses describe the petitioner's work on various projects, such as "a support system for the fryer unit" and "oil and flavour atomising systems to save on raw materials and to make the work place safer for operators."

On February 1, 2002, the director instructed the petitioner to submit further evidence to show that the petitioner meets the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, counsel states that the petitioner "is self-employed and thus cannot obtain labor certification. . . . As a food technologist, [the petitioner] works for different companies at different times, depending on their need for his exceptional problem-solving skills. In this regard, he functions as a self-employed consultant who enters into temporary contracts with his employers." Counsel then offers an abbreviated quotation from the precedent decision. The complete passage reads as follows:

> The Service acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. While this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field.

Matter of New York State Dept. of Transportation at 218, n. 5. In this instance, witnesses have discussed the petitioner's past work not as a consultant, but as a manager at specific factories. The petitioner has not demonstrated that food technologists in the United States generally work as consultants rather than as full employees of corporations. Thus, the petitioner has not shown that the occupation of a food technologist is one of the "certain occupations wherein individuals are essentially self-employed." Indeed, the petitioner's submission includes letters that describe the petitioner's efforts to find work in the United States. [redacted] president of Wellington Burke Ltd., states:

> We place highly qualified and selected people in middle and upper management levels in various organizations.
>
> [The petitioner] approached us in 1998 for the first time and hired our services looking for a job in Food and Allied Manufacturing Companies who might be interested in hiring him for their R&D and manufacturing plants.
>
> A number of companies have shown interest in [the petitioner] with his experience, however all of the companies interested require either [a] work permit or a green card for legal status.

This letter does not indicate that the petitioner seeks to work as a consultant. Rather, he has been attempting for several years to obtain a management position. These companies could seek to obtain labor certification on the petitioner's behalf, but there is no indication that they have done so. The waiver application, in this instance, appears to be essentially an attempt to bypass the job offer requirement without the direct involvement of the unidentified prospective employers.

Counsel states that the petitioner "has letters from several major companies, copies of which are attached, attesting that said companies would be interested in employing [the petitioner's] services once he obtains a green card." The submission includes only one letter (actually, an electronic mail message) from a

prospective employer. A message from [redacted], CEO of Cybersoft North America, Inc., informs the petitioner: "We are impressed with your accomplishments" but "as you are still in the process of obtaining your work permit, we will not be able to offer you the opportunity at this time." The petitioner states that he had applied for the position of vice president of consultancy and marketing. There is no indication that the position directly involves food technology, or that the company employs any food technologists.[1] Therefore, there is no evidence that the petitioner's application for a position at this company shows the petitioner's intention to continue working as a food technologist.

The petitioner has also submitted new witness letters. Dean [redacted] director of professional development at the Institute of Food Technologists, states that the petitioner's "Resume is by far the most impressive listing of work experience, positive letters of recommendation from major food processors, etc., and examples of accomplishments I have ever seen. It indicates a remarkable variety of skills and talents, which would be extremely valuable in the field of food science and technology." If the record fully supported these claims, they would tend to support a finding of exceptional ability. (As it stands, the record does not even contain the resume in question, and therefore we cannot determine the extent to which the record supports the claims in that resume.) The construction of the statute clearly shows, however, that exceptional ability is not, by itself, grounds for a national interest waiver. It cannot suffice simply to suggest that the petitioner should receive a waiver because he is an especially well-qualified food technologist.

[redacted] an associate professor of Food Science at Purdue University, states:

> It is in the national interest of this country for [the petitioner] to be allowed into the United States due to his outstanding achievements, exceptional ability, impressive credentials, and his potential for making developments beneficial to the field of food processing. . . .
>
> The unique aspect of [the petitioner's] experience is that he has demonstrated many times over an ability to develop creative solutions to processing problems and invent unique and innovative new products. . . .
>
> He possesses a rare combination of talents much sought after in the US food processing industry. [The petitioner] is certain to enhance the profitability and competitiveness of our industry.

First-hand evidence of demand for the petitioner's services in the U.S. food processing industry is lacking in the record. Also, the new letters fail to persuade us that it is in the national interest, as opposed to the interest of a given employer, to ensure that the petitioner is hired rather than a qualified U.S. worker. Simply showing that the petitioner is very good at his job is not sufficient to show eligibility for the special benefit of a waiver of the job offer requirement.

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[1] The electronic mail message identifies Cybersoft North America's web site as http://www.csnainc.com. The company's profile listed on this web site states: "Cybersoft is an IT-Enabler Software Solutions Developer with rapidly growing business in North and South America. The company is headquartered in Houston Texas (USA) with an offshore software development facility in Lahore, Pakistan." Under "Our History," the site contains the following information: "CYBERSOFT has established itself as a trusted quality provider of Software Programs & tools for Receivable Management Applications, Custom Applications including data driven work flow based Web Apps, Wireless infrastructure applications and support services to major telecom and Cellular Companies." The home page shows four facets of the company's business: "Medical Applications," "Receivable Management Applications," "Telecommunication Applications," and "Web Aware Applications." The home page also has a "search" function. A search for the word "food" yielded a result of "No Records found matching your search."

The director had also instructed the petitioner to submit Form ETA-750B, Statement of Qualifications of Alien, as required by 8 C.F.R. § 204.5(k)(4)(ii). The petitioner's response, however, did not include this form. Therefore, on April 7, 2003, the director again instructed the petitioner to submit this form. On June 1, 2003, the petitioner submitted the completed form. The form indicates that, from 1999 to mid-2003, the petitioner worked as a consultant for A.M.B. Enterprise of Irvine, California, identified as a "consulting firm." The company's address is the same as the petitioner's own address as listed on the Form I-140 petition. The petitioner states that he "developed new projects concepts and feasibility studies for improvement on packaging and production utilizing expertise in consumer friendly packaging in conjunction with research and development and marketing departments for U.S. and European companies." Since June 2003, the petitioner states that he has been director of operations for [redacted]. The petitioner offers this description of his work:

> Responsible for overseeing and innovating the entire manufacturing process utilizing improved methods to increase efficiency, responsible for implementing and integrating new design and processes for product packaging utilizing the latest state-of-the-art methods and technology. Utilizing knowledge of systems designed by alien such as damping on Vibro-Flow conveyor; electrostatic coating system and support system for submerged conveyor.

The record contains no documentation from A.M.B. Enterprise.[2] Following the AAO's motion to reopen the proceeding, the petitioner has submitted a letter from Dr. Heba Hamida of Hamida Pharma's human resources and administration department. Dr. [redacted] states that the company "focuses on developing advanced and highly innovative phytomedicines [plant-based medicines] that target specific conditions." Dr. [redacted] states that the petitioner "has truly set himself apart as an exceptionally qualified Process Validation Engineer." From the descriptions provided, there is no indication that the petitioner has worked as a food technologist since 1999. Because the petitioner's waiver request relies heavily on his achievements as a food technologist, this is not an insignificant observation.

The director acknowledged the intrinsic merit and potential national scope of the petitioner's work, but found that the petitioner had not established that the petitioner's achievements in his field justify a national interest waiver of the job offer requirement. The director acknowledged and discussed the favorable witness letters in the record, but noted that "superior ability is not by itself sufficient cause for a national interest waiver." The director also stated that the record does not show the petitioner to have been particularly influential in his field.

On appeal, the petitioner states that the witness letters in the record establish the petitioner's "past achievements in implementing new inventions in food processing, which would be of immense benefit to the food industry in the United States." As noted previously, a food technologist's job is to devise new and improved techniques in food processing. The petitioner's ability to do this job is not *prima facie* grounds for a national interest waiver.

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[2] Attempts to verify the existence of A.M.B. Enterprise have been unsuccessful. An online search of registered California businesses at http://kepler.ss.ca.gov/list.html, accessed June 17, 2005, shows no record of a company, partnership, or limited liability company in Irvine called "A.M.B. Enterprise," "AMB Enterprise," "A.M.B. Enterprises" or "AMB Enterprises." The search reveals a company called "AMB Enterprises, Inc.," in Sunnyvale, California; this company's corporate status has been suspended.

Counsel argues that the witnesses have stated that the petitioner will benefit the United States to a greater extent than other qualified food technologists. Superior qualifications, however, even if solidly documented, do not necessarily translate into a finding that it is in the national interest to ensure that the petitioner immigrates without first facing the test of the labor certification process. Obviously, if a given company sought to hire a new food technologist, that company would desire to hire the most qualified applicant for the position. This is standard business practice rather than a circumstance unique to the profession of food technology. Employing the best available worker would obviously further that company's interests, but there has been no persuasive showing that this benefit would extend beyond that one company.

Counsel contends that the petitioner's "proposed work would have a vastly positive effect on the US food economy by implementation of more cost-effective and efficient ways to produce and package foods," but the record is devoid of evidence to show that the actions of one food technologist have had, or are reasonably likely to have, a detectable, sustained economic impact in the United States at the national level. This is particularly true with regard to proprietary technology available to only one company. Product improvements that attract business to one company, at the expense of competitors, produce no net benefit to the nation. It is not in the national interest to ensure that one U.S. corporation outperforms its U.S. rivals. On the technical side, the petitioner has not shown that, for instance, his crimping apparatus has had a significant impact on the U.S. food industry.

We have already noted, above, that the beneficiary's work for [redacted] represents a deviation from his previous work as a food technologist. In his latest submission, the petitioner indicates that he is attempting to develop numerous additional inventions. The devices include exhaust systems, motion sensors, and other devices. The only device that appears to relate to the food industry is a food cutter designed to reduce contamination. This list of devices shows that the petitioner is a prolific and ambitious inventor, but, again, the list offers little evidence that the petitioner will continue in the food technology field that formed the cornerstone of his initial waiver request.

The record contains nothing from representatives of United States snack manufacturers, such as Frito-Lay or Nabisco, to indicate that these companies had taken any notice of the petitioner's work before or after he entered the United States in July 1999. Since entering the United States, the petitioner has worked for a pharmaceutical company, and performing consulting work about the petitioner has provided no useful information, and he has applied for a position at an information technology firm. These actions do not demonstrate any strong tendency by the petitioner to remain in the food technology field at all. The claim that there is strong demand for the petitioner's services as a food technologist has no support in the record.

At best, the record demonstrates that the petitioner is an experienced and accomplished food technologist, who has helped his past employers to expand and improve their range of products, but who has since sought work outside the food industry. The petitioner has not shown that the prospective national benefit that would arise from his future work is of such a caliber that it warrants a waiver of the job offer requirement that, by law, normally attaches to the immigrant classification that the petitioner has chosen to seek.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.